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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,113	09/18/2006	Gil Naor	P-70415-US	9381
49443 7590 02/07/2011 Pearl Cohen Zedek Latzer, LLP 1500 Broadway 12th Floor New York, NY 10036				
EXAMINER				
BLATT, ERIC D				
ART UNIT		PAPER NUMBER		
3734				
NOTIFICATION DATE		DELIVERY MODE		
02/07/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@pczlaw.com  
Arch-USPTO@pczlaw.com

**Office Action Summary****Application No.**

10/593,113

**Applicant(s)**

NAOR ET AL.

**Examiner**

Eric Blatt

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-16, 18-23 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-24 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-16, 18-23 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Yassour et al. (US 6,348,063).

Yassour discloses an implant device (Figure 5) for implantation in the cardiovascular system of a subject to divert emboli flowing through a vessel from entering a branch vessel. The device comprises a stent having an anchoring section 90 and a diverter section (the open portion extending out from the closed-loop cylindrical anchoring section 90 is considered to comprise the claimed diverter section). The diverter section is integrally formed with the anchoring section and has a free end that can project into an aortic arch at the upstream side of the branch blood vessel. The diverter section decreases in width toward its free end. The diverter section is constructed to permit flow of blood through the aortic arch and includes an outer surface that is effective to divert emboli in the blood from entering the carotid artery. The diverter section is formed as a porous open braided structure, and the anchoring section is also formed of open braided material having a strands of a different diameter than those of the diverter section. (Col. 7, Lines 11-29, Col. 8, Lines 2-22) The diverter

section is in the form of a curved planar sheet and its outer surface has a convex configuration. The diverter section has a rounded shape. Said shape may be considered bulbous. The device is capable of being positioned in an aortic arch such that an end extends toward the center of the aortic arch. As seen in Figure 5, the diverter section may be angled somewhat relative to the anchoring section 90. Thus, it is capable of being angled away from the anchoring section in the downstream direction of blood flow when the device is implanted in the branch blood vessel.

### ***Response to Arguments***

Applicant's arguments with respect to claims 14-16, 18-23 and 26 have been considered but are not persuasive.

Applicant argues that Yassour fails to disclose the claimed apparatus on the grounds that, "nothing in Yassour teaches or suggests using the device . . . in an aortic arch as required in Applicants' claim 14." Examiner responds by noting that claim 14 is an apparatus claim and cannot positively claim how the device is used. Claim 14 functionally recites how the device is oriented in an aortic arch, but these limitations require only that the device is *capable of* being positioned as recited. Examiner maintains that the Yassour device is capable of being positioned as such, and that the claimed apparatus is therefore anticipated by the Yassour disclosure.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Blatt whose telephone number is 571-272-9735. The examiner can normally be reached on Monday-Friday, 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on 571-272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. B./

Examiner, Art Unit 3734

/Gary Jackson/

Supervisory Patent Examiner, Art Unit 3734

January 31, 2011